

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands)	WT Docket No. 06-150
)	
Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems)	CC Docket No. 94-102
)	
Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones)	WT Docket No. 01-309
)	
Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services)	WT Docket No. 03-264
)	
Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules)	WT Docket No. 06-169
)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229
)	
Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010)	WT Docket No. 96-86
)	

**COMMENTS OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (“NTCA”)¹ hereby submits these comments in response to the Federal Communications Commission’s (Commission’s)

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 575 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

Notice of Proposed Rulemaking (Notice) and the accompanying initial regulatory flexibility analysis in the above referenced proceeding.

I. INTRODUCTION AND SUMMARY

NTCA applauds the Commission's decision to replace the unassigned EAG-sized license areas with a mix of geographic licensing areas consisting of CMAs, EAS and REAGs. The 700 MHz spectrum is uniquely situated to provide affordable wireless service in rural areas. Rural carriers seeking to serve rural communities will only have the opportunity to obtain this spectrum if it is auctioned according to small geographic areas. NTCA therefore urges the Commission to auction a block of spectrum in both the Lower and Upper 700 MHz bands according to CMAs.

NTCA generally supports interim performance benchmarks for the 700 MHz spectrum licensees, but not for RSA licensees. The Commission's proposal is therefore too aggressive. It offers no accommodations for the vast differences between different classes of licensees and different geographic sized licenses. The interim benchmarks do not serve their intended purpose when imposed on RSA licensees and RSA licensees legitimately need more time to construct than do other licensees. Interim performance benchmarks should be adopted for 700 MHz licensees serving REAGs, EAS and non-rural CMA areas only.

Last, NTCA opposes any provisions that restrict the ability of rural LEC broadband providers to obtain 700 MHz spectrum. The Commission should not limit the pool of bidders for RSA licenses to non-wireline broadband providers; nor should it limit the ability of Rural LECs to obtain bidding credits.

II. NTCA SUPPORTS LICENSING THE 700 MHz SPECTRUM ACCORDING TO A MIX OF GEOGRAPHIC LICENSING AREAS

NTCA applauds the Commission's decision to replace the unassigned EAG-sized license areas, as established in the current band plan, with a mix of geographic licensing areas consisting

of CMAs, EAs, and REAGs. As the Commission correctly recognizes, the revisions are consistent with the goal of providing greater access to spectrum for small providers and parties in rural areas, and improving the opportunity for a wider range of potential licensees to obtain access to this valuable spectrum.

NTCA is one of the signatories to the Balanced Consensus Proposal which was submitted to the Commission in October, 2006.² The basic outline of the proposal should be given substantial weight by the Commission. It recognizes the unique characteristics of the 700 MHz spectrum and its desirability for small and rural carriers, while preserving the ability of mid-sized and large carriers to obtain geographic territories that suit their business models. Under the proposal, two blocks of spectrum each would be auctioned according to CMAs, EAs, and REAGs. The Balanced Consensus Proposal therefore provides for a mix of licenses of varying sizes and geographic regions in both the upper and 700 MHz lower bands, which in turn would facilitate the competitive and rapid deployment of innovative wireless services. The Commission should take a similar approach when evaluating the appropriate geographic license territories for the remaining 700 MHz spectrum.

A. NTCA SUPPORTS THE COMMISSION'S PROPOSED RECONFIGURATION OF THE LOWER 700 MHz BAND

NTCA supports the Commission's proposed reconfiguration of the Lower 700 MHz Band. The plan offers one block of spectrum each according to CMAs, EAs and REAGs. The CMA block is of primary concern to NTCA's membership and NTCA has specifically advocated for the B block to be auctioned according to smaller geographic areas.

In addition to providing an opportunity for new 700 MHz licensees, licensing the Lower 700 MHz B block according to CMAs may permit existing Lower 700 MHz C-block licensees

² See, Balanced Consensus Proposal for Reconfiguring the 700 MHz Band Plans in WT Docket No. 06-150 (filed Oct. 20, 2006).

the flexibility of augmenting their spectrum with adjacent bandwidth for a combined 24 MHz block of spectrum. Current C-block licensees will need additional bandwidth to meet future consumer broadband demands and accommodate new technologies. As the demand for wireless broadband grows, the current 12 MHz of paired spectrum will eventually be exhausted. Unlike larger, nationwide carriers with large accumulations of spectrum already at their disposal, smaller carriers need this opportunity to provide competitive service.

B. NTCA SUPPORTS “PROPOSAL 2” FOR THE UPPER 700 MHz BLOCK WITH THE C BLOCK AUCTIONED ACCORDING TO CMAs

NTCA supports Proposal 2 for the Upper 700 MHz band, provided there is a CMA block.³ This proposed band plan contemplates licensing 34 megahertz of commercial spectrum in the Upper 700 MHz Band using a mix of geographic licensing areas. NTCA submits that the proposed C block, 11 MHz of 2 x 5.5 MHz, be auctioned according to the 734 CMAs, rather than EAs.⁴ This plan, with one block each licensed according to CMAs, EAS and REAGs, provides opportunities for small providers in rural areas and new entrants seeking to establish a nationwide wireless footprint. It also provides large blocks of spectrum according to the larger geographic areas that the larger carriers advocate for.

NTCA opposes those proposals that offer no Upper 700 MHz spectrum according to CMAs. Proposals that would offer spectrum only according to REAGs and/or EAs ensure that all of the Upper 700 MHz spectrum will be won by large, nationwide or regional carriers, with no opportunities for small enterprises.

As NTCA has emphasized in nearly all auction and wireless competition proceedings in which it has commented, small carriers have an opportunity to obtain spectrum at auction only if it is offered according to small geographic areas. While larger carriers prefer licenses covering

³ Notice, ¶¶ 192-193.

⁴ NTCA supports auctioning the D block according to EAs and the E block according to REAGs.

EAs or REAGs, they do have the opportunity to obtain spectrum when it is licensed according to CMAs. Conversely, small carriers are essentially precluded from obtaining spectrum when it is licensed according to the larger carriers' preferred EAs or REAGs. Small carriers simply lack the resources to financially compete for licenses covering large swaths of territory. They also lack the need for large swaths of territory. Rural LECs generally seek wireless licenses covering their own rural territory or neighboring CMAs to serve the rural communities.

Licensing both the upper and lower 700 MHz bands according to a mix of geographic areas would provide the opportunity for all to obtain spectrum. Small carriers would have an opportunity to compete for CMAs and larger carriers could compete for EAs and REAGs. Large carriers would also have the opportunity to supplement their upper 700 MHz spectrum with CMAs where spectrum of the REAG or EA is not sufficient, or aggregate CMAs as needed. Those RSAs considered less desirable to large carriers, but very much desirable to rural carriers, would be licensed to those rural carriers who value the licenses and intend to serve the rural populations. The Commission should abide by the basic tenants of the Balanced Consensus Proposal and adopt a band plan that affords opportunities for all potential licensees to obtain spectrum in both the Upper and Lower Bands.

III. NTCA SUPPORTS PERFORMANCE BENCHMARKS FOR NON-RSA LICENSEES

NTCA is generally supportive of interim performance benchmarks, but not for RSA licenses. Benchmarks help to ensure that large licensees do not hoard spectrum or build out only the most profitable, densely populated areas. It forces a licensee with a large geographic territory to either build out its entire license area, permit another party to build out the territory, or lose its rights to a portion of the license. In this manner, consumers in the less profitable rural areas tend to receive service sooner, either from the original licensee, or a smaller provider who

gains rights to the spectrum. Interim performance benchmarks should be adopted for 700 MHz licensees serving REAGs, EAs and non-rural CMA areas. However, licensees serving RSAs should be exempt from the three and five year interim buildout requirements.

The Commission proposes to use a modified version of RCA's build out recommendation, which combines performance requirements based on geographic benchmarks and a "keep what you use" rule. The proposal offers no accommodations for the vast differences between different classes of licensees and different geographic sized licenses. This proposal is therefore too aggressive.

Geographic benchmarks only serve their purpose, ensuring rural build out and avoiding spectrum hoarding, when imposed on large carriers that obtain licenses covering large geographic territories or licenses covering urban areas. There is no evidence of rural carriers focusing build out on urban centers and leaving rural communities unserved. RSA license territories contain no urban centers. They are, by definition, rural. A small carrier who obtains an RSA license seeks to serve the rural community.

Furthermore, rural carriers cannot meet the same build out schedule of larger carriers or those serving densely populated areas. Small carriers serving rural communities lack the economies of scope and scale of carriers serving urban populations. It costs more and takes more time to build out in rural areas. There are fewer people to support tower construction and difficult terrain increases construction costs. Small licensees face an additional obstacle in obtaining equipment. Equipment manufacturers understandably concentrate their efforts on meeting the demands of large licensees serving large populations. There is a significant lag before equipment is available for rural markets.

Forcing RSA licensees to return spectrum based on three and five year construction benchmarks will only mean that more rural communities will remain unserved. Rural carriers are committed to a high level of quality wireless service in rural communities, but circumstance dictates that they need more time to provide it than do larger carriers or those serving urban areas. The Commission should not impose interim benchmarks on RSA licensees.

IV. THE COMMISSION SHOULD NOT RESTRICT THE ABILITY OF WIRELINE BROADBAND PROVIDERS TO OBTAIN 700 MHz SPECTRUM

The Commission seeks comment on various proposals that would restrict the ability of existing wireline broadband service providers to be eligible to hold an Upper 700 MHz spectrum block. It would be a mistake for the Commission to restrict the ability of rural wireline providers to obtain the spectrum or to receive bidding credits. While NTCA understands the desire to offer new entrants the ability and incentive to obtain the spectrum, rural communities will be best served if rural wireline carriers have the opportunity to obtain 700 MHz spectrum. Rural LECs are currently using spectrum obtained in the lower 700 MHz auction as a compliment to their wireline service, offering wireless broadband to those customers who cannot be economically reached via wires.

Restrictions on rural phone companies' ability to obtain 700 MHz spectrum also run counter to the goals of Section 309(j) of the Communications Act which directs the Commission to provide spectrum-based opportunities specifically to rural telephone companies.⁵ Congress mandated that the Commission "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services."⁶ To achieve this goal, the statute requires the Commission to consider various procedures, thus ordering the Commission to design

⁵ 47 U.S.C. § 309(j)

⁶ 47 U.S.C. § 309(j)(4)(D).

its auction procedures to ensure that designated entities have opportunities to obtain licenses and provide services.

In addition to this mandate, the statute sets forth various Congressional objectives. For example, it provides that in establishing eligibility criteria and bidding methodologies the Commission shall “promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.”⁷

Rural LECs have the ability and incentive to offer high quality wireless service to the rural communities in which they are situated. Any rules restricting the ability of existing wireline broadband service providers to obtain 700 MHz spectrum should not apply to Rural LECs seeking RSA licenses to serve rural communities.

V. CONCLUSION

NTCA’s rural telephone company membership is very much interested in the auction of the remaining 700 MHz spectrum, believing it to be a unique opportunity to obtain spectrum that is particularly well suited for their needs. NTCA applauds the Commission’s decision to replace the unassigned EAG-sized license areas with a mix of geographic licensing areas consisting of CMAs, EAS and REAGs. Rural carriers seeking to serve rural communities will only have the opportunity to obtain this spectrum if it is auctioned according to small geographic areas. NTCA therefore urges the Commission to auction a block of spectrum in both the Lower and Upper 700 MHz bands according to CMAs.

⁷ 47 U.S.C. §§ 309(j)(3)(B), 309(j)(4)(A).

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Initial Comments of the National Telecommunications Cooperative Association in WT Docket No. 06-150, WT 06-169, PS 06-229, and WT 96-86, FCC 07-72, was served on this 23rd day of May 2007 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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